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REVIEW OF THE EFFICIENCY OF THE ADMINISTRATIVE AND FINANCIAL FUNCTIONING OF THE UNITED NATIONS

Jurisdictional and procedural mechanisms for the proper management of resources and funds of the United Nations

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 48/218 of 23 December 1994, entitled "Review of the efficiency of the administrative and financial functioning of the United Nations", the General Assembly decided to establish an ad hoc intergovernmental working group of experts in the legal and financial fields which would work in consultation with the relevant existing bodies and submit a report to the General Assembly with specific recommendations no later than at its forty-ninth session. The Working Group was established to study the establishment of a new jurisdictional and procedural mechanism or of the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms to address alleged cases of fraud in the United Nations in an impartial manner, in accordance with due process of law and full respect for the rights of each individual concerned, especially the rights of defence.

2. In the same resolution, the General Assembly requested the Secretary-General to seek the views of Member States on that issue, and to bring those views to the attention of the Ad Hoc Intergovernmental Working Group of Experts as well as to the attention of the General Assembly.

3. Pursuant to resolution 48/218, the Secretary-General addressed a note verbale on 3 February 1994 to all States, requesting their views on the issue. As at 21 March 1994, 12 Governments had replied to the note verbale of the Secretary-General. Replies and notifications received subsequent to that date will be issued as addenda to the present report.

II. REPLIES RECEIVED FROM GOVERNMENTS

ARGENTINA

[Original: Spanish]

[1 March 1994]

1. The Argentine Republic is of the opinion that it is neither necessary nor advisable to set up new jurisdictional mechanisms. Establishing another organ to deal with such cases would be inadvisable not only for reasons of functional and financial economy but also because it would not provide a solution to the type of problems that arise when staff members of the United Nations commit acts of fraud. The Argentine Government considers that these problems call for an expansion and improvement of existing jurisdictional mechanisms. In addition, it believes that procedures for cooperation between Member States and the Organization and also among Member States should be strengthened.

2. Expanding the terms of reference and improving the jurisdictional and procedural mechanisms existing in the United Nations would mean:

(a) Expanding the competence <u>ratione materiae</u> of the United Nations Administrative Tribunal (and, presumably, changing its name), so as to enable it to determine whether there had been any fraud or, more broadly, any violation of

the financial and accounting regulations of the Organization and to identify and punish those responsible. This determination could, indeed, lead to disciplinary measures imposed by the Tribunal itself and also, when the scope or nature of the acts so warranted, to civil and criminal proceedings in national courts with a view to trying to recover the misappropriated funds and sentencing the guilty parties. Bearing in mind that the Administrative Tribunal was established by a General Assembly resolution, and that its Statute was subsequently modified by resolutions of that same organ, it is the Argentine Government's understanding that expansion of the Administrative Tribunal's competence and further modification of its Statute would also have to be effected by means of a General Assembly resolution;

(b) Given the nature of the new functions to be assigned to the Administrative Tribunal and the grave civil and criminal consequences which might, from time to time, ensue for those responsible, it would probably be necessary to make substantial procedural changes, in order to ensure that the defendant's rights were properly safeguarded. In particular, consideration should be given to the possibility of providing for a second hearing, which is essential to any modern judicial system. It is worth recalling that under the present system, decisions of the Administrative Tribunal can be reviewed only by means of an advisory opinion of the International Court of Justice and that the only organ which can request such an opinion is the Committee on Applications for Review of Administrative Tribunal Judgements. Thus the possibility of review is dependent on the decision of the Committee and the Committee is not, strictly speaking, a real jurisdictional organ. In any event, the International Court of Justice was established to settle disputes between States, and does not appear to be the most appropriate organ for hearing cases of fraud involving individuals.

3. As we already pointed out, some kinds of acts could lead to civil and criminal proceedings in national courts with a view to trying to recover funds and sentencing the guilty parties, and this would necessitate establishing specific mechanisms of cooperation with Member States, namely:

(a) In civil matters, States would have to recognize the decisions handed down by jurisdictional organs of the United Nations. Accordingly, national courts would confine themselves to seeing to it that the funds were recovered, without reviewing the material aspects of the case, thereby avoiding difficulties concerning the relationship between domestic law and the law of the Organization. This recognition of the decisions of the Organization as final could be achieved through bilateral agreements between the Organization and each Member State or by means of a multilateral convention. The Argentine Government is inclined to favour a multilateral convention so as to speed up the negotiating process and ensure uniformity of treatment of this issue;

(b) In order to secure enforcement of the judgements, consideration should be given to the possibility that States parties might agree, in the same multilateral instrument, that their national courts should adopt such cautionary measures as the United Nations Administrative Tribunal might request. In addition, the multilateral convention should include a judicial cooperation agreement which would facilitate judicial assistance between States parties with respect to acts committed by staff members of the Organization;

(c) With regard to criminal matters, it does not seem too realistic to aspire to a uniform system whereby Member States could accept the decisions of the United Nations Administrative Tribunal as the basis for passing sentence on the perpetrators. Initially, it might be necessary to limit the obligations of States to a generic duty to cooperate with the Organization in order that the persons responsible might be punished.

CHINA

[Original: English]

[28 February 1994]

The Chinese Government shares the concerns expressed by some Member States about the financial irregularities which have occurred from time to time within the Organization and believes that there is still room for further improvement in the financial functioning of the Organization.

As the United Nations is still in the process of reform and restructuring, the primary purpose of which is to streamline its structure and improve its efficiency, it is imperative that efforts should be made to avoid setting up duplicating and overlapping organs. The Chinese Government therefore stands for the extension of the mandates and improvement of the existing jurisdictional and procedural mechanism such as the Administrative Tribunal of the United Nations.

The Chinese delegation has made its contribution to the debate on the issue during the forty-eighth regular session of the General Assembly. The Chinese Government will instruct its delegates to continue to work with all the delegations so as to bring the proposed discussion on the issue to a consensus.

COLOMBIA

[Original: Spanish]

[3 March 1994]

1. DISCIPLINARY ACTION

The establishment and convening of the Group of Experts referred to in General Assembly resolution 48/218 should be expedited.

On the basis of the Group's recommendations it may be determined whether the most effective way to proceed is to expand the role of the Administrative Tribunal or to establish new machinery. In any event the Group of Experts should contribute to:

(a) A more detailed definition of the offences which it is intended to combat;

(b) The establishment of more effective machinery to detect and investigate presumed offences;

(c) The establishment of a stricter system of penalties, including the use of the pensions of culprits to recover misappropriated funds and/or the use of financial penalties against culprits.

2. CRIMINAL PROSECUTION

The Secretariat, in document A/48/572, has failed to respond expeditiously to the request made by the General Assembly in paragraph 13 of its resolution 47/211 of 23 December 1992. Perhaps with the support of the Group of Experts, specific proposals could be formulated allowing for the use of national criminal proceedings against those guilty of fraud. Two approaches should be explored: for the culprit to be tried by the country where the offence is committed, or by the country of which he or she is a national. In both cases it would be necessary to waive the immunity enjoyed by international civil servants. To this end the bilateral agreements that each country has with the United Nations could be amended.

FRANCE

[Original: French]

[2 March 1994]

I. AIDE-MEMOIRE ON THE ESTABLISHMENT OF A BUDGETARY AND FINANCIAL DISCIPLINARY TRIBUNAL AT THE UNITED NATIONS 1/

1. There are few cases of misappropriation of funds, breach of accounting rules, fraud or corruption at the United Nations, but they undermine the Organization's image and credibility, particularly since they are widely publicized by the media.

2. The General Assembly has demonstrated its concern over the instances of misuse or fraudulent use of resources to which the Board of Auditors has drawn attention and, in its resolution 47/211, it requested the Secretary-General to make proposals to it on:

(a) Establishing legal and effective mechanisms to recover misappropriated funds;

1/ This aide-mémoire has been submitted by the French authorities merely as a proposal for discussion by the Working Group and for the consideration of delegations.

(b) Seeking criminal prosecution of those who have committed fraud against the Organization.

3. It is in this context that France has proposed the establishment of a budgetary and financial disciplinary tribunal at the United Nations.

4. The report of the Secretary-General (A/48/572) indicates the limitations of existing procedures:

(a) Internal measures are exclusively administrative. Deductions may be made from salaries, wages and other emoluments for indebtedness to the United Nations (staff rule 103.18). This is the method generally employed by the Organization in dealing with such matters. However:

(i) This approach assumes that the staff member is still in service with the Organization; and that

(ii) Steps to attach pension benefits have not been successful.

The recovery of monies owed is not considered a disciplinary measure (staff rule 110.3). Under article X of the Staff Regulations, disciplinary measures may be imposed on staff members whose conduct is unsatisfactory. However:

- Disciplinary action in the area of financial management cannot be left to the sole discretion of the administration, which seldom takes disciplinary action against staff members in this area;

- The visibility of any such disciplinary measure is limited.

Neither the Administrative Tribunal of the United Nations nor the Administrative Tribunal of the International Labour Organization (ILO) is competent to hear cases which employing organizations might bring against their staff members.

Actions outside the United Nations fall into two categories:

(a) Civil actions for recovery: as noted in the report of the Secretary-General (A/40/471), while in principle an employing organization can initiate proceedings against a staff member or a former staff member in a national court to recover monies that it cannot deduct from the staff member's emoluments, international organizations have shown little interest in involving national courts in the settlement of disputes relating to their internal functioning. The report of the Secretary-General (A/48/572) notes that a national court may find difficulties in applying internal rules of an organization which do not have the force of law in that national legal system. Lastly, civil actions assume that the staff member being sued is in the territory of the country where the fraud was committed;

(b) Criminal actions: these also assume the presence of the staff member in the territory of the country in question, and raise problems of proof. In any event such actions fall within the sovereignty of the State.

5. The solution proposed by France would allow the Organization to initiate proceedings against staff members suspected of fraud or breaches of the regulations and rules of the Organization and to impose disciplinary measures in the form of fines. The establishment of a new tribunal within the United Nations is justified on the following grounds:

(a) An internal tribunal must be available to the Organization for actions against its staff members, thus minimizing the difficulties attaching to external action. National civil courts would have to be involved only for the enforcement of a judgement for recovery;

(b) Any internal tribunal must be ad hoc. It has not proved possible to extend the jurisdiction of the Administrative Tribunal. To reopen this question, consideration of which was repeatedly postponed by the General Assembly and which the Fifth Committee decided to close, would probably have the same outcome, whereas a clear political signal must be given quickly. Further, there is the question of the specialism of the judges who would need to pronounce on breaches of Financial Regulations and Rules: such tribunals are, at least in part, composed of senior judges specializing in financial matters;

(c) The disciplinary tribunal would hand down only disciplinary penalties, which would be cumulative and carry criminal penalties, the latter falling exclusively within the competence of national courts.

In order to facilitate civil actions for recovery and criminal prosecution in the competent national courts, the establishment of the tribunal could be accompanied by the conclusion of agreements between Member States and the United Nations. These agreements would allow the Organization to refer matters to national courts on the basis of judgements delivered by the tribunal.

6. The tribunal would comprise six members selected by the General Assembly from a list of senior judges specializing in financial matters approved by the Advisory Committee on Administrative and Budgetary Questions (ACABQ).

They would serve for a non-renewable six-year term.

The tribunal would comprise two chambers with three judges each.

Prosecutorial functions would be discharged by the future Inspector-General.

The reporting judges would be selected by the tribunal from a list of national experts approved by ACABQ. Their number would vary according to the case and they would be selected with due regard for geographical distribution.

Secretariat services for the tribunal would be provided by the secretariat of the Administrative Tribunal.

7. The Disciplinary Tribunal would be competent to deal with breaches of the Financial Regulations and Rules and of the Staff Rules of the United Nations, which contain specific provisions intended to protect the Organization against

any financial loss that might result from the breach, by a staff member, of the rules and regulations or related administrative instructions:

- Every official of the United Nations is responsible to the Secretary-General for the regularity of the actions taken by him or her in the course of his or her official duties. Any official who takes any action contrary to the Financial Rules, or to the administrative instructions issued in connection therewith, may be held personally responsible and financially liable for the consequences of such action (financial rule 114.1 and staff rule 112.3);

- The system of financial control at the United Nations is based on the principles of delegation of authority (financial rules 110.4, 108.9 and 110.16) and separation of authority and delimitation of responsibility (between certifying and approving officers);

- Provisions relating to personal responsibility are contained in the financial rules relating to losses of property, cash or negotiable instruments and the writing-off of such losses (financial rules 109.5, 110.14, 110.15);

A standing instruction of the United Nations Controller provides that staff members are bound to inform the Controller of any cases of fraud, or presumptive fraud, involving misuse of the funds of the Organization of which they are aware.

These provisions could be supplemented to allow the tribunal to deal with breaches relating to any improper financial or other benefit granted to another, or to oneself, or any attempt to grant any such improper benefit.

It should be noted that the tribunal would be competent to deal with breaches involving an irregular practice and a financial loss for the Organization or an improper financial benefit secured for an individual.

Those committing breaches would be absolved from responsibility if they could show proof of prior written instructions from their superiors. The issuer of the order would then be responsible instead.

As in the case of the Administrative Tribunal, the jurisdiction of the tribunal would be limited to staff members of the United Nations Secretariat. With the exception of the Secretary-General, all staff members of the Organization could be the subject of proceedings before the tribunal.

8. Cases could be referred to the tribunal only by the following authorities:

- The Secretary-General of the United Nations;

- The Inspector-General of the United Nations, once the post has been established;

- The Board of Auditors.

Referral must take place within five years of the offence, or the discovery thereof, failing which action would be time-barred.

9. The prosecuting official would decide, after an investigation, whether there were grounds for pursuing the case and, if so, would inform the staff member's supervisor. He would transmit the file to the staff organ or organs for an opinion. The staff member could be assisted by counsel of his or her choice.

Action taken in the disciplinary tribunal would not be a substitute for the disciplinary authority of the Secretary-General.

10. The only penalties which could be imposed by the tribunal would be fines, which are included among the disciplinary measures applicable to United Nations staff members under staff rule 110.3.

These fines could be determined by a modification of the Staff Rules (they could amount to up to double the annual salary in the case of any improper financial or other benefit granted to another or any attempt to grant such benefit). Provision could also be made for the amount of the fine to be left to the discretion of the judges.

Judgements handed down by the tribunal would have the authority of res judicata and could serve as a basis for proceedings to recover the monies involved or for criminal proceedings before national courts.

11. With regard to appeals procedures, provision might be made for an appeal to the chamber of the tribunal which did not hear the case in first instance. Moreover, appeals on a point of law or applications for review would have to be initiated before the tribunal.

12. The tribunal would meet twice a year for a period of 15 days, provided that there were cases which justified holding a session.

The reporting judges would exercise their functions, as necessary, for longer periods, possibly from six to eight months, a year.

The additional costs for which the Organization would be responsible would be limited to the payment of travel expenses and per diem for the members of the tribunal and the reporting judges.

II. THE BUDGETARY AND FINANCIAL DISCIPLINARY TRIBUNAL IN FRANCE 2/

Although the example of the French Budgetary and Financial Disciplinary Tribunal (Cour de discipline budgétaire et financière) cannot be applied absolutely, or at least directly, to the legal and administrative context of the United Nations, some information on the subject might be useful.

Since 1950, when the Budgetary and Financial Disciplinary Tribunal began to function, until the end of 1970, only 69 cases were referred to it (44 by the Cour des comptes (State Audit Office) and 11 by the Commission de vérification des comptes des entreprises publiques (Commission responsible for auditing the accounts of public enterprises)). Of these 69 cases, 44 were dismissed and 25 judgements were handed down (including four orders of nolle prosequi). It was, in fact, a new institution. In order to improve the conditions in which it functioned, an Act adopted on 13 July 1971 introduced various amendments, including a better definition of offences and an expansion of the various categories of officials under the Tribunal's jurisdiction.

Since 1971, more than 300 cases have been referred to the Budgetary and Financial Disciplinary Tribunal. The number of cases referred to it has increased year by year, amounting at present to some 20 cases a year. Approximately 75 per cent of the cases are referred by the Cour des comptes.

A. General description of the Budgetary and Financial Disciplinary Tribunal

1. Mandate and jurisdiction

The Budgetary and Financial Disciplinary Tribunal was established in 1948 to deal with offences committed against budgetary and financial law by officials of the State and, since 1963, of other public authorities.

(a) Punishable offences

Such offences result in general from:

- Disregard or violation of the rules governing the recording of income and expenditure or the administration of the property of the State or of other public agencies (arts. 2 to 5 of the Act of 1948);

- Disregard of the obligations incumbent on an administrator, in cases when the latter has secured, or attempted to secure, an improper benefit for a third party resulting in a loss sustained by the State or agency administered (art. 6).

2/ This paper has been submitted by the French authorities with the sole intention of providing information to the members of the Working Group and delegations.

The Act also makes it mandatory for State finance officers to disburse funds or, failing that, for the accountants to pay the sums required under a judgement of the Tribunal; in the case of a local authority or a public enterprise, the Act makes it mandatory for the finance officer or, failing that, the supervisory authority, to disburse automatically the sums which an individual has been ordered to pay. Failure to fulfil these obligations is punishable by the penalties specified in article 5 of the Act of 1948.

(b) Persons subject to the jurisdiction of the Tribunal

The competence of the Budgetary and Financial Disciplinary Tribunal has been gradually expanded. The following are subject to its jurisdiction:

- The members of a minister's departmental staff;

- Officials or agents of the State or of local authorities or of their groups;

- Representatives, administrators or officials of agencies subject to the control of the Cour des comptes (including public institutions, social security agencies, subsidized agencies and public enterprises) or of the regional audit offices.

Persons de facto exercising the functions of those so designated are also subject to the jurisdiction of the Tribunal.

Proceedings may also be initiated before the Budgetary and Financial Disciplinary Tribunal against supervisory officials who have approved irregular decisions.

Members of the Government, mayors and the chairmen of general or regional councils, as well as the vice-chairmen and other members of those councils to whom they have delegated the exercise of part of their functions are outside the jurisdiction of the Budgetary and Financial Disciplinary Tribunal.

2. Organization and functioning

(a) Composition

The Budgetary and Financial Disciplinary Tribunal has the structure of a court or tribunal.

It is composed of:

- The First President of the Cour des comptes - President;

- A President of a section of the Conseil d'Etat (Council of State);

- Vice-President;

- Two State counsellors;

- Two senior counsellors attached to the Cour des comptes.

The prosecutorial functions for the Tribunal are carried out by the Procureur général (Prosecutor) attached to the Cour des comptes. The reporting judges are appointed from among the members of the Conseil d'Etat or of the Cour des comptes. The Tribunal has a registrar, who is sworn in. Its seat is in the premises of the Cour des comptes.

(b) Referral to the Tribunal and procedure

(i) The following are competent to refer cases to the Tribunal, through the office of the Procureur général:

- The President of the National Assembly;

- The President of the Senate;

- The Prime Minister;

- The Minister of Finance;

- The Ministers responsible for the areas involved in the acts alleged against officials and agents under their authority;

- The Cour des comptes. (Of the cases referred to the Budgetary and Financial Disciplinary Tribunal since 1 January 1971, 182 were referred by the Cour des comptes.)

In addition, the Procureur générale attached to the Cour des comptes, who serves as Procureur générale for the Budgetary and Financial Disciplinary Tribunal, may refer cases to the Tribunal on his own initiative.

Finally, the Act stipulates that, in the event of breaches of the regulations established for the commitment and payment of expenditure relating to the enforcement of judgements involving the payment of a sum of money, "the creditor may bring the matter before the Tribunal through the public prosecutor's office".

(ii) The Procureur général has the power to dismiss cases, which he is entitled to exercise at various stages of the proceedings. If, when a decision taken by a competent authority is referred to him, he believes that there are no grounds for initiating an investigation for reasons of law (time-limitation, etc.) or fact, of which he is the sole judge (for example, if the case is of little importance), he declares the case dismissed, even before a reporting judge has been appointed.

When an individual refers a case to him pursuant to the aforementioned legislative provision, the decision to dismiss the case in general signifies that the threat of it being referred to the Budgetary and Financial Disciplinary Tribunal is sufficient for the plaintiff to obtain satisfaction.

The Procureur général follows the progress of the investigation carried out by the reporting judge appointed by the President. When the investigation of a case has been concluded, the file is transmitted to him and he may once again declare the case dismissed, in the light of the outcome of the investigation.

Lastly, when the file has been transmitted to the competent ministers and they have given their opinion, the Procureur général may again either declare the case dismissed, giving the reasons for his decision, or announce that it should be referred to the Budgetary and Financial Disciplinary Tribunal, giving reasons for his conclusions. The investigation and hearing of cases are governed by rules which are very similar to those governing criminal jurisdictions. In particular, those involved in a case may have the assistance of a lawyer, and often do. The hearings are, however, not public.

Judgements of the Budgetary and Financial Disciplinary Tribunal are not subject to appeal, but an appeal on a point of law may be made to the Conseil d'Etat.

(c) Penalties

The Budgetary and Financial Disciplinary Tribunal imposes fines which may amount to the gross annual salary or wages of the official penalized. Fines of several tens of thousands of francs are not uncommon.

Fines imposed as a penalty nevertheless differ in nature from those imposed by criminal courts. Legal proceedings before the Budgetary and Financial Disciplinary Tribunal do not preclude either criminal proceedings or disciplinary action. Moreover, the law allows the Budgetary and Financial Disciplinary Tribunal to intervene with a view to initiating disciplinary or criminal proceedings.

Judgements handed down by the Budgetary and Financial Disciplinary Tribunal may be published, in whole or in part, in the Journal officiel (Official Gazette) if the Tribunal so decides. The majority of judgements are published, sometimes anonymously. Orders of nolle prosequi are not published.

INDIA

[Original: English]

[11 March 1994]

The Government of India welcomes all proposals that seek to improve and strengthen the existing mechanisms for monitoring fraud against the United Nations, and instituting proceedings against those responsible for it with a view to recovering the misappropriated funds. In this context we believe that General Assembly resolution 48/218 of 23 December 1993 is a move in the right direction. We welcome the setting up of an ad hoc intergovernmental group of experts in the legal and financial fields which will work in consultation with the relevant existing bodies towards this end, and the Government of India would be willing to extend all necessary assistance to this exercise.

The Government of India is of the view that the Member States should initially examine the possibility of extending the mandates and improvement of functioning of existing jurisdictional and procedural mechanisms which have already been established within the United Nations framework, such as the United Nations Administrative Tribunal, for addressing the cases of alleged fraud against the United Nations. The role of existing oversight mechanisms such as the Board of Auditors could also be further strengthened by ensuring accessibility to all books, records and documentation so that cases of fraud can be detected sufficiently early. In this context we also believe that the Secretariat of the United Nations must devise appropriate mechanisms to ensure that all executive heads of United Nations organizations and programmes take immediate steps to address the recommendations of the Board of Auditors and other oversight mechanisms, and to submit reports of measures taken in response to such recommendations to the General Assembly.

The Government of India also believes that the Office of Inspections and Investigations which was established last year will provide a more focused approach to the question of investigations, audit and internal controls with a view to minimizing the misappropriation of funds of the United Nations.

New mechanisms could also be explored after the ad hoc group of experts has, in conjunction with the Board of Auditors, the Joint Inspection Unit, the United Nations Administrative Tribunal and other relevant existing bodies, examined whether in the light of existing mechanisms and the possibility of their being strengthened appropriately to enhance their ability to check fraud against the United Nations, there is still need for any additional body to be established.

NETHERLANDS

[Original: English]

[10 March 1994]

The Netherlands Government welcomes the initiative of the Minister of Foreign Affairs of France on the establishment of a disciplinary court. The creation of such an instrument in connection with the strengthening of the internal and independent mechanisms for inspections and investigations is expected to provide effective preventive and punitive measures against the misappropriation of funds. The Netherlands delegation to the General Assembly has therefore supported the creation of the Ad Hoc Intergovernmental Working Group and looks forward to its recommendations. Among the issues to be considered by the Ad Hoc Group and to which the Netherlands Government attaches particular importance are the need to separate unambiguously investigative and inspection functions from, respectively, prosecution and disciplinary authority, from a legal as well as an organizational point of view. Furthermore, careful study should be made of the relationship between the legal systems of States hosting United Nations entities. The consistent application of correct legal procedures is a fundamental of any system of administrative justice. The relationship between existing mechanisms, such as the United Nations

Administrative Tribunal, and the Court should be clear and duplication and overlaps of jurisdiction should be avoided.

The Netherlands Government believes that current and new mechanisms for inspection, oversight and administrative justice deserve careful consideration. However, the main issue confronting the management of the Organization today appears to be the absence of a clear system of responsibility and accountability of programme managers. The fact that the General Assembly has recently paid particular attention to issues of oversight and inspection should not distract attention from the need to establish a sound management system. It is only on the basis of such a system that the oversight and jurisdictional instruments discussed by the General Assembly and those to be considered by the Ad Hoc Group can contribute to further improvements in the functioning of the Organization.

PANAMA

[Original: Spanish]

[2 March 1994]

The National Government of the Republic of Panama supports the initiative of the United Nations to study the possibility of establishing or strengthening the necessary jurisdictional mechanisms to recover funds and deal with cases of fraud perpetrated against the Organization.

In the view of the National Government, the ad hoc intergovernmental group referred to in paragraph 2 of resolution 48/218 should be composed of experts in criminal as well as international law, since the issues to be discussed range from the function and nature of the Organization as an international legal person to questions of competence, jurisdiction, sanctions, and a possible extradition mechanism, for which the introduction of specific provisions would be necessary.

SWEDEN
(on behalf of the Nordic countries)

[Original: English]

[9 March 1994]

The Nordic countries attach great importance to the proper handling of the financial resources of the United Nations. Consequently, we find a discussion on how to improve the management of resources and funds of the United Nations most beneficial.

The creation of a new jurisdictional mechanism within the United Nations is a major issue indeed, and should be considered with the necessary degree of caution. Our clear preference at this preliminary stage would be to examine the possibilities of optimizing the utilization of existing mechanisms, rather than creating new ones. Such an evaluation of the existing mechanisms, an

undertaking that the Nordic countries welcome, should give Member States the necessary information background for further decisions.

To that end, the Nordic countries wish to point out that cases of fraud or gross mismanagement are punishable under national laws, and the possibility of waiving immunity for United Nations officials is already enshrined in article V of the Convention on Privileges and Immunities of the United Nations. Thus, cases of fraud, and other illegal acts that have caused harm or economic loss to the Organization, could be addressed by the ordinary legal system - in the State where the act has been committed and, in many cases, in the State of which the person responsible is a national as well. The legal process could lead to penalties or duty to pay damages.

Apart from these possibilities, the Nordic countries wish to underline the importance of preventive action in order to control mismanagement and fraud. The enhancement of management and financial responsibilities through effective training would be a step in that direction. Furthermore, improved performance evaluations, strengthened accountability mechanisms for officials and the establishment of internal controls would also be to the benefit of a better management of the United Nations.